IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17723 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

KISAN PULSE MILLSINGH SISODIYA - Petitioner(s)
Versus
UNITED INDIA INSURANCE CO LTD. & 2 - Respondent(s)

==========

Appearance :

MR BHARAT K DAVE for Petitioner(s) : 1,MR JV JAPEE for Petitioner(s) : 1,
MR PV NANAVATI for Respondent(s) : 1,
MR VIBHUTI NANAVATI for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 28/06/2007

ORAL JUDGMENT

The petitioner has approached this Court for obtaining appropriate

direction on the respondent – insurance company to the effect that the insurance company be directed to pay the amount to the petitioner which it has agreed to pay by way of settlement. It is the say of the petitioner that the Surveyor of the respondent carried out the survey with regard to the damage caused to the properties of the petitioner in communal riot and assessed that the petitioner had suffered loss to the extent of Rs.3,30,355/=. It is further averred by the petitioner that based upon the said assessment, respondent – insurance company is willing to pay the said amount. However, it also wants to pin-down the petitioner to the said settlement by foreclosing the right of the petitioner to approach the appropriate forum for lodging a claim for the damage to the properties. In other words, the petitioner has complained that the respondent – insurance company is prepared to pay the said sum provided the petitioner does not resort to any other remedy for obtaining more compensation. According to the petitioner, respondent – insurance company cannot tied the petitioner in this manner.

2. I have heard Mr. JV Jappi, learned advocate appearing for the petitioner and Mr. VP Nanavati, learned advocate appearing for the respondent – insurance company. I have also perused the record of this petition. It is submitted by Mr. Jappi that when the amount outstanding or assessed by the surveyor of the respondent – insurance company is undisputed, the said amount at least be paid to the petitioner unconditionally. He has further submitted that the petitioner cannot foreclose the right of the petitioner to resort to the

remedies available to him in law.

2.1. As against that, Mr. Nanavati has submitted that if this Court, while exercising jurisdiction under Article 226 of the Constitution, directs the insurance company to pay such amount, it will amount to passing preliminary decree in favour of the petitioner, which cannot be done while exercising writ jurisdiction. He has further submitted that as such the claim is now time barred and if the payment is required to be made unconditionally, it will revive the period of limitation which has already expired. Lastly, he has submitted that the petitioner can avail alternative efficacious remedy, subject to the condonation of delay wherein the issues involved in the matter can be adequately decided on the strength of the evidence that may be led before the concerned Court.

3. Having carefully considered the submissions of the learned advocates and having closely perused the record of this petition, it clearly appears that at this stage respondent – insurance company cannot be directed to pay the sum requested for by the petitioner. The issues involved in these proceedings can be adequately threshed out before the appropriate forum by leading proper evidence by the parties. It also appears that the petitioner now intends to approach the Consumers Disputes Redressal Forum. If such petition is made before the said Forum, the petitioner can, if permissible in law, make necessary application requesting the said Forum to pass interim award with regard to the admitted amount. This Court does not express any opinion on this aspect. Suffice it to say that when the alternative efficacious remedy is

available to the petitioner, it can avail the same and get the grievances redressed. This Court under Article 226 of the Constitution of India will not be in a position to grant effective relief to the petitioner. Hence, without considering the merits of the case, this petition is dismissed on the ground of alternative remedy alone. Rule is discharged with no order as to costs.

Considering the fact that considerable time has lapsed since the event in question took place, it is hoped that concerned Forum will decide the application as expeditiously as possible.

[Akshay H Mehta, J.]

* Pansala.